

Petitioner #69
Hassanamisco Reservation and Chaubungagungamaug Nipmuck Indian Council
Comments on Proposed Changes to 25 C.F.R. 83
Submitted to the
Office of Regulatory Affairs & Collaborative Action – Indian Affairs
On
Potential Revisions to 25 C.F.R. § 83
Procedures for Establishing that an American Indian Group Exists as an Indian Tribe

Thank you for the opportunity to provide insight, recommendations, and comments on potential revisions to 25 CFR Part 83, Procedures for Establishing that an American Indian Group Exists as an Indian Tribe. We commend the Department on taking serious steps to improve the transparency, timeliness, efficiency, flexibility and integrity of the administrative acknowledgement process. As Traditional and Hereditary Chief of the Hassanamisco Reservation together with the Chaubungagungamaug Nipmuck Indian Council, the Hassanamisco Reservation Foundation, and Hassanamisco Reservation Tribal Trustees, I respectfully submit these comments with the intention of offering valuable input for improving the process as well as the integrity of federal acknowledgement decisions.

General Comments:

1. Letter of Intent to Petition for Federal Acknowledgement

The letter of intent requirement should not be eliminated, as it is very important for providing procedural timetables that assist petitioners and the federal government to enhance transparency, timeliness, efficiency, flexibility and integrity from the start of this administrative process.

We propose that the letter of intent be shortened and maintained as the initial formal notice of an Indian group's intention to explain that the Indian group has the intention of moving from current unrecognized or state-recognized status to that of a federally recognized tribe. It is also reasonable and we support the continuance of a letter of intent with attachments which provide an explanation of membership and the actual membership roll of the tribe seeking recognition as well as any other critical information.

The letter of intent should be a simple process. The next step would be a response by the Department of the Interior (DOI), informing the petitioning Indian group that their letter of intent with attachments are either in order or that there is a need for more information or clarification, within 6 months after the DOI's official receipt of their letter of intent. Within 180 days of the DOI informing the petitioner that their documentation is complete, the DOI shall notify the petitioner that their petition will undergo either an expedited positive or negative review or that the petitioner must meet the full acknowledgement criteria. Once the DOI's notice is received by the petitioning group, they shall have 180 days to respond with explanation, clarification, or additional information in order to close this phase of the administrative process.

In short, the Letter of Intent to petition should not be brushed aside as insignificant but should be continued as a meaningful tool used to establish clarity, timetables and category of type of review which the petitioning group has been assigned.

2. Standard Form

We are concerned about DOI's desire to include a standard form with the federal acknowledgement process. As a colonial era Indian group, our historic experience cannot be measured in the same standard ways as interior Western tribes or non-colonial contact period tribes. Each tribal group warrants a case-by-case analysis and any standardized form might be helpful but could also be regionally and/or culturally insensitive and therefore potentially bias and discriminatory.

3. Expedited Positive Finding

We agree with and support the DOI's desire to quickly recognize those tribal groups who have held State Recognized Reservations or Federal Trust Land prior to and since 1934. We further believe that the six month time frame is ambitious and supports the DOI's goal of efficiency and timeliness. In that regard, the known and accepted tangible reality of these protected reservations and trust lands, along with accepted evidence of tribal descent and the continuance of inter-governmental relations should act to sharply reduce the length of DOI's review period and to lower the extremely high cost to support this administrative process for all parties.

4. Removal of I.B.I.A. Review with Appeals Direct to Federal Court

We agree with and support the DOI's removal of the IBIA Review and support all appeals being heard in a federal court with competent jurisdiction.

5. Splits in Petitioning Group

We propose that if the DOI intends to split a petitioning group into multiple petitioners, that the DOI should revise their regulations to set standards as to how, when, and why a petition could be split as well as the implications of such a split. By addressing the issue in the revised regulations, future confusion and litigation could be prevented.

6. Federal Mediation

We propose that the DOI offer federal mediation to expedited positive process Indian groups in order to provide the petitioner with technical assistance to deal with the wide range of political challenges those groups will face.

7. Communication Limitation to Authorized Government of the Petitioner

We suggest that the Department include in the regulations a mechanism to ensure that they are communicating with only authorized and/or designated members of each petitioning Indian group. Although we recognize DOI's attempt to do so this becomes difficult in the case of DOI's

decision to split a petition.

8. Mechanism to prevent Politically-Based Federal Acknowledgment Process Decision Reversals during Periods of Administrative Transition

We suggest that the Department include in its revised regulations a mechanism to prevent political reversals of positive affirmations or declinations of federal acknowledgement following federal elections and any change of administrations. Providing such mechanisms would serve to protect the Department from timely and costly litigation and would serve as a significant means of de-politicizing the process for all parties involved.

9. Opportunity to Re-Petition

We agree with and support the DOI's desire to allow Indian groups who can demonstrate that they meet the criteria, under the new regulations, be allowed to present a new petition despite any prior declination under past regulations.

Specific Comments on Criteria:

10. Section 83.1 Definitions for the term "State Recognized Indian Reservations"

We propose the following *additions* to 83.1 Definitions for the term "State Recognized Indian Reservation":

- A clear definition of the Indian land holdings, such as but not limited to, a historic state recognized reservation, state reservations and trust lands established since 1934, and federally recognized reservations.
- Furthermore, the Bureau should clarify the distinctions in process for historic state recognized reservations and a newly established state reservation.

11. Section 83.2 Purpose

In Section 83.2 Purpose, we propose that the language be *revised* to the following:

- "Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes and their historic relationship to the United States Constitution, Treaties, Statutes, Executive Orders, Agency Administrative Rules and Regulations, and Justice Decisions."

12. Section 83.3 Scope

In Section 83.3 Scope, we propose the following *revision*:

- "(f) Finally, groups that previously petitioned and were denied Federal acknowledgment under these regulations or previous regulations in part 83 of this title, may not be

acknowledged under these regulations unless there is a demonstrated critical revision to those regulations that eliminated or meaningfully revised the specific provision that resulted in the denial of the petitioner's application of acknowledgement. This includes reorganized or reconstituted petitions previously denied, or splinter groups, spinoffs, are component groups of any type that were once part of petitioners previously denied."

In Section 83.3 Scope, we propose the following new *additions*:

- "(h) The Assistant Secretary shall on a semiannual basis report to the Secretary of Interior on which Petitions for Federal Recognition that have failed to move within their respective timetable with justification for that delay and the establishment of a corrective action timetable for Completion."
- "(i) The Secretary of Interior shall report these failures to move forward in a timely and efficient manner on an annual basis to the appropriate Congressional Committees and to The White House."
- "(j) The Secretary of Interior shall forward a Letter to each of the affected Petitioning Indian group which explains the delay and the revision of timetables with courtesy copies noted and forwarded to the appropriate Congressional Committees and to the White House."

13. Section 83.7 Mandatory Criteria

In Section 83.7 Mandatory Criteria, we propose the following *revision*:

- "(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1934."

14. Section 83.7(a) Mandatory Criteria

In Section 83.7(a) Mandatory Criteria, we also propose the following *addition*:

- "(a)(7) Identification as an Indian entity with historic State Recognized Indian Reservation dating back to Treaties and Agreements ratified by the United States Constitution."

In Section 83.7(a) Mandatory Criteria, we propose the following *removal*:

- Section 83.7(a)(7) stating that "at least 50 percent of the marriages in the group are between members of the group" should be removed.¹

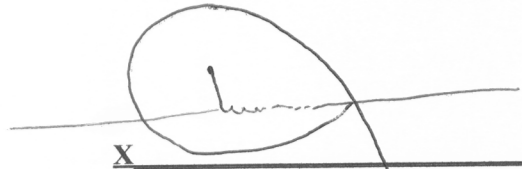
15. Section 83.7(c) Mandatory Criteria

In Section 83.7(c)(2)(iii) Mandatory Criteria, we propose the following *revisions*:

¹ Although this might be acceptable for larger tribes, with a diversification of population and families, most historic tribes have very limited populations and families. A better measurement might be marriage with other regional American Indian groups and tribes.

- “(c)(2)(iii) Exerted influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior.”
- Finally, in Section 83.7(c)(2) Mandatory Criteria, we propose the following new addition:
“(c)(2)(v) The group has sufficient evidence demonstrating their historic involvement with a State Recognized Indian Reservation or State Indian Protected Land dating back to the Colonial Period of American history.”

Respectfully Submitted by the Joint Hassanamisco and Nipmuck Leadership,



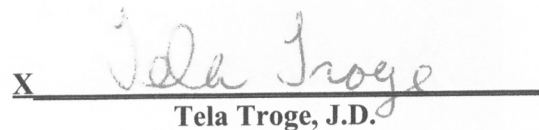
X _____

**Peter Running Deer Silva
Traditional Chief of the Hassanamisco
Indian Foundation and Legal Trustee
of the Hassanamisco Reservation**



X _____

Kelly Dennis, J.D.



X _____

Tela Troge, J.D.

Date: September 23, 2013